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In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 704

ARTHUR MARCUS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (R. 60–67; Pet. App. 23–30) is reported at 310 F. 2d 143.[1]

JURISDICTION

The judgment of the court of appeals was entered on November 28, 1962 (R. 60, 68; Pet. App. 23). The petition for a writ of certiorari was filed on December 28, 1962. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

[1] The record certified by the clerk of the court of appeals will be cited as "R." We have lodged with the clerk of this Court the transcript of the district court proceedings (in three volumes) to which reference will be made by volume and page number.

QUESTIONS PRESENTED

1. Whether the grand jury proceeding was, in the words of the immunity provision of the Communications Act, "based upon or growing out of any alleged violation of this Act," so that the court was empowered to grant immunity to petitioner and compel his testimony.

2. Whether Section 1084(c) of the Transmission of Wagering Information Act which provides that "nothing contained in this section shall create immunity from criminal prosecution under any laws of any State, Commonwealth of Puerto Rico, territory, possession or the District of Columbia" precluded the grant of immunity under Section 409(*l*) of the Communications Act.

3. Whether the immunity provision of the Communications Act may be used only in proceedings instituted by the Federal Communications Commission.

STATUTES AND RULE INVOLVED

The pertinent statutes and rule are Sections 203(c), 409 and 501 of the Communications Act of 1934, 48 Stat. 1070, 1096, 1100, as amended, 47 U.S.C. 203(c), 409, 501; 18 U.S.C. 1084, 75 Stat. 491; and Rule 42(b) of the Federal Rules of Criminal Procedure. They are printed in Appendix A, *infra*, pp. 19–22.

STATEMENT

On April 19, 1962, after a hearing pursuant to Rule 42(b), F.R. Crim. P., in the United States District Court for the District of De .. , Chief Judge Caleb Wright found the petitioner guilty of contempt of court under 18 U.S.C. 401(3) for having willfully

violated a court order that, pursuant to the immunity from prosecution conferred by Section 409(*l*) of the Communications Act of 1934, he testify before a federal grand jury investigating violations of the Communications Act and other statutes (R. 40–43, 44–45). Petitioner was sentenced to imprisonment for six months (R. 44–45), the court stating that it would entertain a motion for reduction of sentence if the petitioner within sixty days agreed to testify before the grand jury (Vol. III, 37). The conviction was affirmed on appeal (R. 60–67; Pet. App. 23–30).

The pertinent facts may be summarized as follows:

In December 1961, Mr. Joseph Corey was appointed by the Department of Justice as a Special Attorney to conduct grand jury proceedings and assist in the trial of cases "growing out of the transactions hereinafter mentioned" (R. 2). The letter of appointment read in part (R. 2):

> The Department is informed that various persons * * * and organizations to the Department unknown, have violated in the District of Delaware, and in other judicial districts the bankruptcy, bribery, fraud, internal revenue, slot machine, racketeering, labor management relations, perjury, obstruction of justice, stolen property, conspiracy, the Federal Communications Act, transmission of gambling information, travel in aid of racketeering enterprises, interstate transportation of wagering paraphernalia, and other criminal laws of the United States, and have conspired to commit all such offenses and to defraud the United States in violation of Section 371 of Title 18 of the United States Code.

In April 1962, petitioner was subpoenaed as a witness before a federal grand jury in Wilmington, Delaware, which was inquiring into violations of several statutes including the Communications Act of 1934 (R. 5, 22, 29). Mr. Corey advised the petitioner that he had the constitutional right to refuse to answer any questions which might tend to incriminate him (R. 6–7, 28), and that he had a right to confer with counsel outside of the grand-jury room concerning any of the questions put to him. On repeated occasions during the subsequent grand jury proceedings, petitioner was excused from the grand jury room to permit him to confer with counsel (*e.g.*, R. 8–10, 12–13, 14, 19–20, 29, 31–32, 35). Of the approximately 100 questions propounded, petitioner answered some twenty questions which related to general or family matters (*e.g.*, name, address, marital status, physical characteristics, etc.) and refused to answer the remaining questions claiming the privilege against self-incrimination. At an early point in the proceedings, petitioner stated that he did not know the subject of the inquiry before the grand jury (R. 14–15). Shortly thereafter, the following proceedings transpired (Vol. I, 18–19, 22, 23–24, 25–26):

> Q. [Mr. COREY]: Would you state, sir, whether you had telephone service at your home?
>
> A. (The Fifth.)[2]

[2] The actual statement of the witness was, "I respectfully refuse to answer on the grounds it might tend to incriminate me." The court permitted the shorthand reporter, who was reading the testimony from his notes, to say "The Fifth" instead of repeating the longer answer (see Vol. I, 6).

Q. Is your telephone being used for bookmaking purposes, Mr. Marcus?

A. (The Fifth.)

Q. Are long distance telephone calls being made on telephones at your home?

A. (The Fifth.)

Q. Are you aware of the tariff of the New England Telephone and Telegraph Company which is filed with the Federal Communications Commission, and which states that service is furnished subject to the condition it will not be used for an unlawful purpose?

A. (The Fifth.)

Q. Are you stating, Mr. Marcus, that the service that you use when you do use your telephone at home is such that you are using the telephone for an unlawful purpose?

A. (The Fifth.)

Q. Are you causing the telephone company to be in violation of its tariff by making unlawful telephone calls?

A. (The Fifth.)

* * * * *

Q. Have you been in association with a person by the name of Angelo Rossetti?

A. (The Fifth.)

Q. Do you receive telephone calls from Angelo Rossetti regarding race results?

A. (The Fifth.)

Q. Do you call Mr. Angelo Rossetti at any place in the Boston area and give him race results?

A. (The Fifth.)

* * * * *

Q. Are you engaged in any interstate gambling activities, Mr. Marcus, which requires

your using the telephones provided to you by the New England Telephone and Telegraph Company?

A. (The Fifth.)

* * * * *

Q. We are inquiring here into the possible violations under the Federal Communications Act as well as other possible violations of the laws of the United States. Now, in connection with the Federal Communications Act do you know that the New England Telephone and Telegraph Company in Boston, Massachusetts, have filed with the FCC tariffs which require that the use of the service they provide is not to be for an unlawful use?

A. Am I acquainted with the laws, sir?

Q. Yes.

* * * * *

[Petitioner left the grand jury room to confer with counsel and returned.]

Q. Do you wish the last question repeated to you?

A. No, sir. Upon advice of counsel I respectfully refuse to answer on the grounds it may tend to incriminate me.

* * * * *

On their face, approximately one-third of the questions as to which petitioner invoked the privilege related to telephone numbers, telephone service and telephone uses (R. 8, 9, 10, 13, 14, 25, 27, 28, 29, 31, 33–34). For example, petitioner was asked whether he had telephone service at his residence; whether he complained to the Public Utilities Commission of Massachusetts when the telephone company refused to install twelve telephones in his office;

whether he used telephone service in connection with interstate gambling operations; whether he transmitted or received race results over the telephone (R. 8–10, 21, 22, 25, 27–29, 31). The remaining questions related, in the main, to petitioner's employment; acquaintanceship with certain individuals and knowledge of their whereabouts; income tax returns; and possible gambling activities (*e.g.*, R. 10–12, 17, 25–26, 30–31).

On April 2, 1962, the government requested the district court to grant immunity to the petitioner under Section 409(*l*) of the Communications Act of 1934, 47 U.S.C. 409(*l*) (*infra*, pp. 19–20), "so he is ordered to answer questions that have been propounded to him and which might tend to show violations of the laws of the United States" (R. 5). Mr. Corey stated (R. 5):

> This is a problem that arises out of testimony of a witness before the grand jury that is presently in session. The grand jury is inquiring into violations under statute 1084, under the transmission of interstate wagering information; also under the interstate travel violation, which I believe is Section 1053; possibly under Section 2 of Title 18, aiding and abetting; possibly under the conspiracy act; under the internal revenue statutes; under the Federal Communications Act, if I haven't already mentioned it.

At the request of the court, the full proceedings on petitioner's appearance before the grand jury—all the questions, answers, and claims of privilege—

were read into the record by the shorthand reporter (Vol. I, 1–32). In the course of the reading, one of petitioner's counsel remarked that, during a certain recess of the grand jury, Mr. Corey informed him (in the presence of the petitioner and another attorney for the petitioner) that the grand jury "inquiry was concerned with race wire operations" (R. 15–16). Mr. Corey agreed with the remark and added that he had also informed counsel at that time "that there might be some tax liabilities involved" (R. 18). Later in the hearing, Mr. Corey said (R. 37; see Vol. I, 38, 41):

> We believe, Your Honor, the use of telephones for an unlawful purpose causes the telephone company to be in violation of its tariff and therefore it would become punishable under this Federal Communication Act, and we wish to see that the witness is granted immunity so that he may not be punished under this act after the testimony he may give is given.

On April 17, 1962, after having received briefs and heard argument from counsel for both sides, the court granted the application of the government, and directed that petitioner and the grand jury appear before the court on the following day (R. 38–39). On April 18, 1962, the court ordered the petitioner (Vol. II, 99–100):

> to answer completely and truthfully all questions propounded to you in the course of you[r] forthcoming appearance before the grand jury. In exchange for your testimony immunity from subsequent prosecution or sub-

> jection to any subsequent penalty or forfeiture is hereby bestowed upon you.
>
> In the words of the statute, this immunity extends to any transaction, matter, or thing encompassed in the subject matter of the testimony you are about to give. The immunity conferred precludes subsequent State prosecution as well as Federal. To this extent the immunity exceeds the protection afforded by the constitutional privilege against self-incrimination * * *.

Upon his return before the grand jury, and after answering a few preliminary inquiries, the following eight questions were propounded to the petitioner:

> Now, Mr. Marcus, do you have a telephone at your home? [Vol. II, 133]
>
> Mr. Marcus, what is the telephone number of any telephone that you may have at your home? [Vol. II, 134]
>
> Mr. Marcus, have you or any person standing in your place had telephone service from the New England Telephone and Telegraph Company from September 16, 1961, to date at your residence, or any place of business you may operate from? [Vol II, 135]
>
> Mr. Marcus, are you self-employed? [Vol. II, 135]
>
> Mr. Marcus, is it your intention that this statement will be read to every question that is propounded to you before this grand jury? [Vol. II, 136]

---

[1] Petitioner refused to answer each question by reading the following statement (Vol. II, 134):

> Counsel has advised me if I am held in contempt for refusing to answer that I have a legal basis for appealing the contempt conviction, and if I answer your questions I

> This answer which you have given us is one which has been written out for you? [Vol. II, 137]
>
> Mr. Marcus, do you have any business connection with a person known as Angelo Rossetti in Boston, Massachusetts? [Vol. II, 138]
>
> Mr. Marcus, did you understand at the time you were before the Court that you were there granted an immunity in that any testimony that you might give before this grand jury would be testimony of a nature on which you will not be prosecuted on in the future? [Vol. II, 140]

On the advice of counsel, with whom he conferred outside the grand jury room following almost every question, petitioner refused to answer each of the questions "on the grounds that my answer may tend to incriminate me." He did respond to the fifth question above, answering that he intended to claim the privilege as to any question asked if the answer might tend to incriminate him (Vol. II, 136, 137).

In affirming the conviction, the court of appeals held that the immunity provision of the Communications Act was constitutional and was properly applied to give immunity to petitioner in the circumstances of the grand jury proceedings (Pet. App. 26, 28–29). It found specifically that the questions asked "showed that the inquiry was concerned, *inter alia*, with unlawful use of telephones to transmit gambling information" and that "the questions which

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may be held to have waived my constitutional rights if an appellant [sic] court reverses the contempt conviction, so I respectfully refuse to answer on the grounds that my answer may tend to incriminate me.

were actually asked of [petitioner following the court's grant of immunity] were directly within the purview of the investigation" (Pet. App. 24, 25).

ARGUMENT

1. Petitioner contends (Pet. 8–14, 16–21) that the court was not authorized to grant him immunity under Section 409(*l*) of the Communications Act (*infra*, pp. 19–20) because the government failed to establish that the primary purpose of the grand jury investigation was to inquire into possible violations of the Communications Act. The short answer is that Section 409(*l*) requires only that the cause or proceeding be "based upon or growing out of any alleged violation of this Act." A review of the letter appointing the special attorney to conduct the grand jury proceedings, the questions asked of the petitioner prior to the grant of immunity, the government's argument to the court in support of its request for the immunity, and the seven questions petitioner refused to answer after the grant of immunity shows that the inquiry was directed toward violations of the Communications Act and that the immunity provisions of that statute were therefore properly applied. The fact that investigation of possible violations of other statutes was also within the purview of the inquiry does not render the immunity provisions inapplicable, particularly where a predominant number of questions asked of the petitioner prior to the grant of immunity concerned possible unlawful use of telephone service in violation of the Communications Act and where all seven questions which petitioner refused to answer after the grant of immunity—the basis of his

contempt conviction—were related to that subject. See *United States* v. *Onassis*, 125 F. Supp. 190, 199-200 (D. D.C.); *United States* v. *Niarchos*, 125 F. Supp. 214, 224 (D. D.C.);[1] *In re Bart*, 304 F. 2d 631, 636 (C.A.D.C.). As the court of appeals stated (Pet. App. 28, n. 4), "* * * it is the 'proceeding', not necessarily the indictment or indictments resulting therefrom, which must be based upon the Communications Act."

In moving the court to exercise its authority under Section 409(*l*) to grant petitioner immunity, the government relied upon the proposition that the regular use of the telephone for the unlawful transmission of wagering information is a violation of the Communications Act (see Statement, *supra*, p. 8). Thus,

[1] In *Onassis* and *Niarchos* the district court upheld motions for dismissal of indictments on the ground that the defendants had testified in a prior grand jury investigation relating to possible violations of the Shipping Act and were therefore immune from prosecution under that Act. Section 28 of the Shipping Act, 46 U.S.C. 827, in a manner similar to the Communications Act, confers immunity wherever an individual testifies "in any proceeding based upon or growing out of any alleged violation of [the Shipping Act] * * *." The government argued that the subject matter of the prior grand jury inquiry was not related to Shipping Act violations but, after an extensive review of the cases, Judge Youngdahl held that the immunity provision did apply, stating, "It is sufficient to realize that the subject matter of the inquiry related to *possible* violations of Sections 9 and 41 [of the Shipping Act]" (125 F. Supp. at 200, 224). The court indicated that "the more important test * * * is one of determining if the *subject matter* of the inquiry did *in fact* relate to Shipping Act violations" (*ibid.*). The fact that violations of other statutes were said by the government to have been the sole purpose of the inquiry did not preclude the grand jury proceeding from being "one based upon or growing out of alleged violations of the Shipping Act" (*ibid.*).

government counsel stated, "a person who causes a telephone company to provide a service which is not within their tariff, or it is prohibited by their tariff, is one who is in violation of Title 47 * * * (Vol. II, 71)."

The violation of the Communications Act for which the government was seeking evidence in these proceedings would be made out under the following statutory and tariff provisions: Under Section 501 of the Communications Act (*infra*, p. 20), "[a]ny person who willfully and knowingly * * * causes or suffers to be done any act, matter or thing * * * prohibited or declared to be unlawful * * *" in the Communications Act commits an offense punishable by fine and imprisonment. In turn, Section 203(c) of the Communications Act (*infra*, p. 19) provides that no carrier shall provide communicaton service "except as specified" in its tariff. The tariff filed by the New England Telephone and Telegraph Company[5] (Vol. II, 71) provides (as do those of most, if not all, such tariffs):

> *Use of Service for Unlawful Purposes.*
>
> The service is furnished subject to the condition that it will not be used for an unlawful purpose.

The long-lines tariff of the American Telephone & Telegraph Company which governs long distance interstate telephone service contains the same provision.[6] Thus, a person who regularly uses the tele-

[5] Tariff No. 132, General Regulations B, Sec. 9, Third Rev., p. 9a.

[6] American Telephone & Telegraph Company Tariff No. 132, Sec. B of the General Regulations, Paragraph 9, Third Rev., p. 9a.

phone for the transmission of wagering information or other purposes unlawful under the laws of a State or the United States, causes the telephone company to provide service "for an unlawful purpose." Provided the government can show that he acted "willfully and knowingly," it has made out the elements of the violation defined in Section 501 of the Communications Act.[7] In the past, two grand juries have handed down indictments under Section 501 for this violation and the Department of Justice has secured a number of convictions. *United States* v. *Andrews, et al.*, Crim. No. 10288 (E.D. Ky.) (judgments of conviction rendered July 31, 1962), pending on appeal to the Sixth Circuit but not docketed;[8] *United States* v. *Mat-*

[7] In addition to the provisions of Section 501 of the Communications Act, penalizing anyone who willfully causes or suffers an act to be done in violation of the Act, the general aider and abettor statute, 18 U.S.C. 2, may also be applied to make individuals liable as principals to violations of Sections 203(c) and 501 of the Act. Section 2(b) of Title 18 U.S.C. punishes as a principal one who "willfully *causes* an act to be done which if directly performed by him *or another* would be an offense against the United States" (emphasis added). It is well established that one who causes the commission of an offense by an innocent agent or instrumentality is guilty as a principal (*United States* v. *Giles*, 300 U.S. 41; H. Rep. No. 304, 80th Cong., 1st Sess.; see Reviser's Note to 18 U.S.C. 2(b)), even though he was incapable in the first instance of committing the substantive crime (S. Rep. 1020, 82d Cong., 1st Sess., Sec. 17B, pp. 7–8; see *Phillips* v. *United States*, 218 F. 2d 385, 387 (C.A. 9); *Logsdon* v. *United States*, 253 F. 2d 12, 15 (C.A. 6); *Benchwick* v. *United States*, 297 F. 2d 330, 332–333 (C.A. 9); *Haggerty* v. *United States*, 5 F. 2d 224, 225 (C.A. 7); *United States* v. *Melekh*, 193 F. Supp. 586, 592 (N.D. Ill.)).

[8] In this case, six of the defendants were found guilty, *inter alia*, under Count XXXIII of the indictment which charged:

> That on or about June 26, 1961, at Newport, Kentucky, in the Eastern District of Kentucky, Frank J. Andrews,

thew Francis Whitaker; Crim. No. 21122 (E.D. Pa.) (defendant awaiting sentence, verdict of guilty rendered January 15, 1963).

2. Petitioner also relies on the Transmission of Wagering Information Act, 18 U.S.C. 1084 (*infra*, pp. 20–21), and argues that "the use of the immunity provisions of another Act when seeking to enforce section 1084 is clearly contrary to the intent and spirit of subsection (e)." There is no basis for the contention here. Initially, it must fail for lack of supporting facts since, as shown above, the government was not merely seeking to enforce Section 1084. Beyond this, however, as petitioner recognizes, "section 1084(e) is not a direct prohibition against the granting of immunity * * *" (Pet. 16).[9]

Walter Owens, Daniel Andrews, Peter A. Andrews, Jr., Willard Whitley, Gus Postell, Louis Tye and Frank D. Andriola, the defendants herein, did unlawfully, willfully and knowingly cause the Cincinnati and Suburban Bell Telephone Company and the Citizens Telephone Company to furnish telephone facilities at 325 Central Avenue, Newport, Kentucky, which were used for an unlawful purpose, to wit: to transmit numbers bets placed with the defendants in violation of the effective tariff filed by the American Telephone and Telegraph Company with the Federal Communication Commission, the said tariff having been concurred in by The Cincinnati and Suburban Bell Telephone Company and the Citizens Telephone Company.

[9] Petitioner urges that Congress in Section 1084(e) intended that "immunity should be so restricted as not to interfere with the enforcement by the States of violation of their gambling and wagering statutes" (Pet. 15). However, as the legislative history makes clear, the purpose of this section was only to make certain that the federal government would not be held to have pre-empted the area encompassed by the Act and that the States were free to prosecute for violations of their gambling laws. See, *e.g.*, H. Rep. No. 967, 87th Cong., 1st Sess.

Section 1084(c) provides that "[n]othing contained in this section shall create immunity from criminal prosecution under any laws of any State, Commonwealth of Puerto Rico, territory, possession, or the District of Columbia." However, as the court of appeals correctly pointed out (Pet. App. 30), "it is plain that this provision merely declares that *'this section'* * * * shall not have the effect of conferring immunity from State prosecution. It does not derogate from the effects of *other* statutes (such as the Communications Act and many others) which *do* confer immunity" (emphasis in original). That Congress has the power to authorize federal and State immunity from prosecution in return for testimony is not open to doubt *Ullmann* v. *United States*, 350 U.S. 422, 435–436 (18 U.S.C. 3486); *Reina* v. *United States*, 364 U.S. 507 (18 U.S.C. 1406); *Brown* v. *Walker*, 161 U.S. 591, 607–608 (49 U.S.C. 46, upon which 47 U.S.C. 409(*l*) is modeled) See also, *Piemonte* v. *United States*, 367 U.S. 556, 560.

3. Petitioner's contention (Pet. 5–8) that the immunity provisions of Section 409(*l*) relate only to proceedings instituted by the Commission for the purpose of enforcing the Communications Act is without merit. While the first part of Section 409(*l*) relates to Commission subpoenas and to proceedings before the Commission, the section specifically provides for immunity "in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of this Act, or of any amendments thereto." It is established that such a grant of immunity applies to grand jury proceedings inquir-

ing into possible violations of the Communications Act. See *Brown* v. *Walker*, 161 U.S. 591; *Brown* v. *United States*, 359 U.S. 41, 45–46; *Levine* v. *United States*, 362 U.S. 610.[10] In *Brown* v. *United States*, this Court, in rejecting the contention that the immunity provisions of Part I of the Interstate Commerce Act (49 U.S.C. 46) were not fully carried forward into Part II of the Act, pointed out that the effect of such a position would be to "rewrite the section so as to make the immunity provision applicable only to witnesses appearing before the Commission, not to those appearing before a grand jury or in

[10] It is the function of the Department of Justice and United States Attorneys to uncover and prosecute criminal violations of the laws of the United States, including violations relating to administrative agencies. A grand jury investigation into possible violations of the Communications Act does not require prior authorization by the Commission. See *United States* v. *Gris*, 247 F. 2d 860 (C.A. 2), where, in a wiretap prosecution under Section 605 of the Communications Act, the appellant contended that he should have been acquitted because the prosecution was not undertaken at the instance of the Federal Communications Commission, citing 47 U.S.C. 401(c) of the Act which provides that "Upon the request of the Commission it shall be the duty of any United States Attorney" to prosecute violations of the Act. In rejecting the contention, the court of appeals held that Section 401(c) "does not contain any provision to the effect that the United States Attorney may not act except upon the request of the Commission, and it would be absurd to attribute such an intention to the Congress. Obviously, many instances of wiretap violations will be brought to the attention of the many United States Attorneys throughout the country before such violations are discovered by the FCC. We cannot imagine why the Congress should want to stultify enforcement of the Federal Communications Act by requiring all prosecutions to be funneled through the Commission" (*id.* at 863).

court" and held that "[s]uch a construction would not only do violence to plain language [in 49 U.S.C. 46], but also * * * to the whole structure of the Interstate Commerce Act" (*Brown* v. *United States*, *supra*, 359 U.S. at 46). Section 409(*l*) is closely patterned after the corresponding provisions of the Interstate Commerce Act (compare 47 U.S.C. 409(*l*) with 49 U.S.C. 46), and the same conclusions hold true here.

CONCLUSION

For the reasons set forth, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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FEBRUARY 1963.

APPENDIX A

Section 203(c) of the Communications Act of 1934, 48 Stat. 1070, 47 U.S.C. 203(c), provides in pertinent part:

> No carrier, unless otherwise provided by or under authority of this Act, shall engage or participate in such communication unless schedules have been filed and published in accordance with the provisions of this Act and with the regulations made thereunder; and no carrier shall * * * (3) extend to any person any privileges or facilities in such communication, or employ or enforce any classifications, regulations, or practices affecting such charges, except as specified in such schedule.

Section 409 of the Communications Act of 1934, 48 Stat. 1096, as amended, 66 Stat. 721, 47 U.S.C. 409, provides in pertinent part:

> (*l*) No person shall be excused from attending and testifying or from producing books, papers, schedules of charges, contracts, agreements, and documents before the [Federal Communications] Commission, or in obedience to the subpena of the Commission, * * * or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of this Act, or of any amendments thereto, on the ground or for the reason that the testimony or evidence * * * required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which

> he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence * * * except that any individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

Section 501 of the Communications Act of 1934, 48 Stat. 1100, as amended, 68 Stat. 30, 47 U.S.C. 501, provides in pertinent part:

> Any person who willfully and knowingly does or causes or suffers to be done any act, matter, or thing, in this Act prohibited or declared to be unlawful, or who willfully and knowingly omits or fails to do any act, matter, or thing in this Act required to be done, or willfully and knowingly causes or suffers such omission or failure, shall, upon conviction thereof, be punished for such offense, for which no penalty (other than a forfeiture) is provided in this Act, by a fine of not more than $10,000 or by imprisonment for a term not exceeding one year, or both; * * *.

18 U.S.C. (Supp. III) 1084, 75 Stat. 491, provides as follows:

> § 1084. *Transmission of wagering information; penalties.*
>
> (a) Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined not more than $10,000 or imprisoned not more than two years, or both.
>
> (b) Nothing in this section shall be construed to prevent the transmission in interstate or for-

eign commerce of information for use in news reporting or sporting events or contests, or for the transmission of information assisting in the placing of bets or wagers on a sporting event or contest from a State where betting on that sporting event or contest is legal into a State in which such betting is legal.

(c) Nothing contained in this section shall create immunity from criminal prosecution under any laws of any State, Commonwealth of Puerto Rico, territory, possession, or the District of Columbia.

(d) When any common carrier, subject to the jurisdiction of the Federal Communications Commission, is notified in writing by a Federal, State, or local law enforcement agency, acting within its jurisdiction, that any facility furnished by it is being used or will be used for the purpose of transmitting or receiving gambling information in interstate or foreign commerce in violation of Federal, State, or local law, it shall discontinue or refuse, the leasing, furnishing, or maintaining of such facility, after reasonable notice to the subscriber, but no damages, penalty or forfeiture, civil or criminal, shall be found against any common carrier for any act done in compliance with any notice received from a law enforcement agency. Nothing in this section shall be deemed to prejudge the right of any person affected thereby to secure an appropriate determination, as otherwise provided by law, in a Federal court or in a State or local tribunal or agency, that such facility should not be discontinued or removed, or should be restored.

Rule 42(b) of the Federal Rules of Criminal Procedure provides:

(b) *Disposition Upon Notice and Hearing.* A criminal contempt except as provided in subdivision (a) of this rule shall be prosecuted on notice. The notice shall state the time and

place of hearing, allowing a reasonable time for the preparation of the defense, and shall state the essential facts constituting the criminal contempt charged and describe it as such. The notice shall be given orally by the judge in open court in the presence of the defendant or, on application of the United States attorney or of an attorney appointed by the court for that purpose, by an order to show cause or an order of arrest. The defendant is entitled to a trial by jury in any case in which an act of Congress so provides. He is entitled to admission to bail as provided in these rules. If the contempt charged involves disrespect to or criticism of a judge, that judge is disqualified from presiding at the trial or hearing except with the defendant's consent. Upon a verdict or finding of guilt the court shall enter an order fixing the punishment.

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